

“(1) COMPETITIVE NEGOTIATION.—The transaction should be negotiated competitively, taking into account the value of expediting the process.

“(2) RESULTING INSTITUTION ADEQUATELY CAPITALIZED.—Any insured depository institution created or assisted in the transaction (hereafter the ‘resulting institution’) and any institution acquiring the troubled institution should meet all applicable minimum capital standards.

“(3) SUBSTANTIAL PRIVATE INVESTMENT.—The transaction should involve substantial private investment.

“(4) CONCESSIONS.—Preexisting owners and debtholders of any troubled institution or its holding company should make substantial concessions.

“(5) QUALIFIED MANAGEMENT.—Directors and senior management of the resulting institution should be qualified to perform their duties, and should not include individuals substantially responsible for the troubled institution’s problems.

“(6) FDIC’S PARTICIPATION.—The transaction should give the Federal Deposit Insurance Corporation an opportunity to participate in the success of the resulting institution.

“(7) STRUCTURE OF TRANSACTION.—The transaction should, insofar as practical, be structured so that—

“(A) the Federal Deposit Insurance Corporation—

“(i) does not acquire a significant proportion of the troubled institution’s problem assets;

“(ii) succeeds to the interests of the troubled institution’s preexisting owners and debtholders in proportion to the assistance the Corporation provides; and

“(iii) limits the Corporation’s assistance in term and amount; and

“(B) new investors share risk with the Corporation.

“(c) REPORT.—Two years after the date of enactment of this Act [Dec. 19, 1991], the Federal Deposit Insurance Corporation shall submit a report to Congress analyzing the effect of early resolution on the deposit insurance funds.”

#### EXTENSION OF EMERGENCY ACQUISITION AND NET WORTH GUARANTEE PROVISIONS OF PUB. L. 97-320

No amendment made by section 141(a) of Pub. L. 97-320, set out as a note under section 1464 of this title, or section 206(a) of Pub. L. 97-320, set out as a note above, as in effect before Aug. 10, 1987, to any other provision of law to be deemed to have taken effect before such date and any such provision of law to be in effect as if no such amendment had been made before such date, see section 509(c) of Pub. L. 100-86, set out as a note under section 1464 of this title.

No amendment made by section 141(a) or section 206(a) of Pub. L. 97-320, set out as notes under sections 1464 and 1729 of this title, respectively, as in effect on the day before Oct. 8, 1986, to any other provision of law to be deemed to have taken effect before such date and any such provision of law to be in effect as if no such amendment had taken effect before such date, see section 1(c) of Pub. L. 99-452, set out as a note under section 1464 of this title.

Sections 141(a) and 206(a) of Pub. L. 97-320, which are set out as notes under sections 1464 and 1729 of this title, as such sections were in effect on the day after Aug. 27, 1986, applicable as if such sections had been included in Pub. L. 97-320 on Oct. 15, 1982, with no amendment made by any such section to any other provision of law to be deemed to have taken effect before Aug. 27, 1986, and any such provision of law to be in effect as if no such amendment had taken effect before Aug. 27, 1986, see section 1(c) of Pub. L. 99-400, set out as a note under section 1464 of this title.

#### ANNUAL REPORTS TO CONGRESS BY FEDERAL HOME LOAN BANK BOARD AND FEDERAL DEPOSIT INSURANCE CORPORATION ON PURCHASES OF NET WORTH CERTIFICATES

Pub. L. 97-320, title II, §204, Oct. 15, 1982, 96 Stat. 1495, provided that: “The Federal Home Loan Bank Board

and the Board of Directors of the Federal Deposit Insurance Corporation shall each transmit an annual report to each House of the Congress specifying the types and amounts of net worth certificates purchased from each depository institution and the conditions imposed on each such depository institution.”

[For termination, effective May 15, 2000, of reporting provisions relating to the Federal Deposit Insurance Corporation in section 204 of Pub. L. 97-320, set out above, see section 3003 of Pub. L. 104-66, set out as a note under section 1113 of Title 31, Money and Finance, and page 167 of House Document No. 103-7.]

#### SEMIANNUAL AUDIT BY COMPTROLLER GENERAL OF NET WORTH CERTIFICATE PROGRAMS OF FEDERAL DEPOSIT INSURANCE CORPORATION AND FEDERAL HOME LOAN BANK BOARD

Pub. L. 97-320, title II, §205, Oct. 15, 1982, 96 Stat. 1495, provided that: “The Comptroller General of the United States shall conduct on a semiannual basis an audit of the net worth certificate programs of the Federal Deposit Insurance Corporation and the Federal Home Loan Bank Board. A report on each such audit shall be transmitted to each House of the Congress.”

[For termination, effective May 15, 2000, of reporting provisions in section 205 of Pub. L. 97-320, set out above, see section 3003 of Pub. L. 104-66, set out as a note under section 1113 of Title 31, Money and Finance, and page 3 of House Document No. 103-7.]

### § 1824. Borrowing authority

#### (a) Borrowing from Treasury

##### (1) In general

The Corporation is authorized to borrow from the Treasury, and the Secretary of the Treasury is authorized and directed to loan to the Corporation on such terms as may be fixed by the Corporation and the Secretary, such funds as in the judgment of the Board of Directors of the Corporation are from time to time required for insurance purposes, not exceeding in the aggregate \$100,000,000,000 outstanding at any one time, subject to the approval of the Secretary of the Treasury: *Provided*, That the rate of interest to be charged in connection with any loan made pursuant to this subsection shall not be less than an amount determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. For such purpose the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds of the sale of any securities hereafter issued under chapter 31 of title 31, and the purposes for which securities may be issued under chapter 31 of title 31 are extended to include such loans. Any such loan shall be used by the Corporation solely in carrying out its functions with respect to such insurance. All loans and repayments under this subsection shall be treated as public-debt transactions of the United States. The Corporation may employ any funds obtained under this section for purposes of the Deposit Insurance Fund and the borrowing shall become a liability of the Deposit Insurance Fund to the extent funds are employed therefor.

##### (2) Funding

There are hereby appropriated to the Secretary, for fiscal year 1989 and each fiscal year

thereafter, such sums as may be necessary to carry out this subsection.

**(3) Temporary increases authorized**

**(A) Recommendations for increase**

During the period beginning on May 20, 2009, and ending on December 31, 2010, if, upon the written recommendation of the Board of Directors (upon a vote of not less than two-thirds of the members of the Board of Directors) and the Board of Governors of the Federal Reserve System (upon a vote of not less than two-thirds of the members of such Board), the Secretary of the Treasury (in consultation with the President) determines that additional amounts above the \$100,000,000,000 amount specified in paragraph (1) are necessary, such amount shall be increased to the amount so determined to be necessary, not to exceed \$500,000,000,000.

**(B) Report required**

If the borrowing authority of the Corporation is increased above \$100,000,000,000 pursuant to subparagraph (A), the Corporation shall promptly submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives describing the reasons and need for the additional borrowing authority and its intended uses.

**(C) Restriction on usage**

The Corporation may not borrow pursuant to subparagraph (A) to fund obligations of the Corporation incurred as a part of a program established by the Secretary of the Treasury pursuant to the Emergency Economic Stabilization Act of 2008 [12 U.S.C. 5201 et seq.] to purchase or guarantee assets.

**(b) Borrowing from Federal Financing Bank**

The Corporation is authorized to issue and sell the Corporation's obligations, on behalf of the Deposit Insurance Fund, to the Federal Financing Bank established by the Federal Financing Bank Act of 1973 [12 U.S.C. 2281 et seq.]. The Federal Financing Bank is authorized to purchase and sell the Corporation's obligations on terms and conditions determined by the Federal Financing Bank. Any such borrowings shall be obligations subject to the obligation limitation of section 1825(c) of this title. This subsection does not affect the eligibility of any other entity to borrow from the Federal Financing Bank.

**(c) Repayment schedules required for any borrowing**

**(1) In general**

No amount may be provided by the Secretary of the Treasury to the Corporation under subsection (a) unless an agreement is in effect between the Secretary and the Corporation which—

(A) provides a schedule for the repayment of the outstanding amount of any borrowing under such subsection; and

(B) demonstrates that income to the Corporation from assessments under this chapter will be sufficient to amortize the outstanding balance within the period estab-

lished in the repayment schedule and pay the interest accruing on such balance.

**(2) Consultation with and report to Congress**

The Secretary of the Treasury and the Corporation shall—

(A) consult with the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the terms of any repayment schedule agreement described in paragraph (1) relating to repayment, including terms relating to any emergency special assessment under section 1817(b)(7) of this title; and

(B) submit a copy of each repayment schedule agreement entered into under paragraph (1) to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate before the end of the 30-day period beginning on the date any amount is provided by the Secretary of the Treasury to the Corporation under subsection (a).

**(d) Borrowing for the Deposit Insurance Fund from insured depository institutions**

**(1) Borrowing authority**

The Corporation may issue obligations to insured depository institutions, and may borrow from insured depository institutions and give security for any amount borrowed, and may pay interest on (and any redemption premium with respect to) any such obligation or amount to the extent—

(A) the proceeds of any such obligation or amount are used by the Corporation solely for purposes of carrying out the Corporation's functions with respect to the Deposit Insurance Fund; and

(B) the terms of the obligation or instrument limit the liability of the Corporation or the Deposit Insurance Fund for the payment of interest and the repayment of principal to the amount which is equal to the amount of assessment income received by the Fund from assessments under section 1817 of this title.

**(2) Limitations on borrowing**

**(A) Applicability of public debt limit**

For purposes of the public debt limit established in section 3101(b) of title 31, any obligation issued, or amount borrowed, by the Corporation under paragraph (1) shall be considered to be an obligation to which such limit applies.

**(B) Applicability of FDIC borrowing limit**

For purposes of the dollar amount limitation established in subsection (a), any obligation issued, or amount borrowed, by the Corporation under paragraph (1) shall be considered to be an amount borrowed from the Treasury under such subsection.

**(C) Interest rate limit**

The rate of interest payable in connection with any obligation issued, or amount borrowed, by the Corporation under paragraph

(1) shall not exceed an amount determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

**(D) Obligations to be held only by BIF members<sup>1</sup>**

The terms of any obligation issued by the Corporation under paragraph (1) shall provide that the obligation will be valid only if held by a<sup>2</sup> insured depository institution.

**(3) Liability of the Deposit Insurance Fund**

Any obligation issued or amount borrowed under paragraph (1) shall be a liability of the Deposit Insurance Fund.

**(4) Terms and conditions**

Subject to paragraphs (1) and (2), the Corporation shall establish the terms and conditions for obligations issued or amounts borrowed under paragraph (1), including interest rates and terms to maturity.

**(5) Investment by insured depository institutions**

**(A) Authority to invest**

Subject to subparagraph (B) and notwithstanding any other provision of Federal law or the law of any State, any insured depository institution may purchase and hold for investment any obligation issued by the Corporation under paragraph (1) without limitation, other than any limitation the appropriate Federal banking agency may impose specifically with respect to such obligations.

**(B) Investment only from capital and retained earnings**

Any insured depository institution may purchase obligations or make loans to the Corporation under paragraph (1) only to the extent the purchase money or the money loaned is derived from the member's<sup>3</sup> capital or retained earnings.

**(6) Accounting treatment**

In accounting for any investment in an obligation purchased from, or any loan made to, the Corporation for purposes of determining compliance with any capital standard and preparing any report required pursuant to section 1817(a) of this title, the amount of such investment or loan shall be treated as an asset.

**(e) Borrowing for the Deposit Insurance Fund from Federal home loan banks**

**(1) In general**

The Corporation may borrow from the Federal home loan banks, with the concurrence of the Federal Housing Finance Board, such funds as the Corporation considers necessary for the use of the Deposit Insurance Fund.

**(2) Terms and conditions**

Any loan from any Federal home loan bank under paragraph (1) to the Deposit Insurance Fund shall—

(A) bear a rate of interest of not less than the current marginal cost of funds to that bank, taking into account the maturities involved;

(B) be adequately secured, as determined by the Federal Housing Finance Board;

(C) be a direct liability of the Deposit Insurance Fund; and

(D) be subject to the limitations of section 1825(c) of this title.

(Sept. 21, 1950, ch. 967, §2[14], 64 Stat. 890; Pub. L. 101-73, title II, §218, Aug. 9, 1989, 103 Stat. 261; Pub. L. 101-508, title II, §2005, Nov. 5, 1990, 104 Stat. 1388-16; Pub. L. 102-242, title I, §§101, 103(a), 105, Dec. 19, 1991, 105 Stat. 2236, 2237, 2239; Pub. L. 102-550, title XVI, §1603(a)(2), Oct. 28, 1992, 106 Stat. 4078; Pub. L. 103-204, §10, Dec. 17, 1993, 107 Stat. 2389; Pub. L. 104-208, div. A, title II, §2704(d)(14)(N)-(Q), Sept. 30, 1996, 110 Stat. 3009-493; Pub. L. 109-171, title II, §2102(b), Feb. 8, 2006, 120 Stat. 9; Pub. L. 109-173, §8(a)(20)-(24), Feb. 15, 2006, 119 Stat. 3613, 3614; Pub. L. 111-22, div. A, title II, §204(c)(1), May 20, 2009, 123 Stat. 1649.)

REFERENCES IN TEXT

The Emergency Economic Stabilization Act of 2008, referred to in subsec. (a)(3)(C), is div. A of Pub. L. 110-343, Oct. 3, 2008, 122 Stat. 3765, which is classified principally to chapter 52 (§5201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5201 of this title and Tables.

The Federal Financing Bank Act of 1973, referred to in subsec. (b), is Pub. L. 93-224, Dec. 29, 1973, 87 Stat. 937, as amended, which is classified generally to chapter 24 (§2281 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2281 of this title and Tables.

CODIFICATION

“Chapter 31 of title 31” substituted in subsec. (a) for “the Second Liberty Bond Act, as amended” on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

PRIOR PROVISIONS

Section is derived from subsec. (o) of former section 264 of this title. See Codification note set out under section 1811 of this title.

AMENDMENTS

2009—Subsec. (a). Pub. L. 111-22 substituted “\$100,000,000,000” for “\$30,000,000,000”, designated existing provisions as pars. (1) and (2), inserted par. headings, and added par. (3).

2006—Subsec. (a). Pub. L. 109-173, §8(a)(20), in fifth sentence, substituted “Deposit Insurance Fund” for “Bank Insurance Fund or the Savings Association Insurance Fund” and “the Deposit Insurance Fund” for “each such fund”.

Pub. L. 109-171. Pub. L. 109-171 repealed Pub. L. 104-208, §2704(d)(14)(N). See 1996 Amendment note below.

Subsec. (b). Pub. L. 109-173, §8(a)(21), substituted “Deposit Insurance Fund” for “Bank Insurance Fund or Savings Association Insurance Fund”.

Pub. L. 109-171 repealed Pub. L. 104-208, §2704(d)(14)(O). See 1996 Amendment note below.

Subsec. (c)(3). Pub. L. 109-173, §8(a)(22), struck out heading and text of par. (3). Text read as follows:

“(A) BIF MEMBER PAYMENTS.—No agreement or repayment schedule under paragraph (1) shall require any payment by a Bank Insurance Fund member for funds obtained under subsection (a) of this section for purposes of the Savings Association Fund.

<sup>1</sup> So in original. Probably should be “insured depository institutions”.

<sup>2</sup> So in original. Probably should be “an”.

<sup>3</sup> So in original. Probably should be “institution’s”.

“(B) SAIF MEMBER PAYMENTS.—No agreement or repayment schedule under paragraph (1) shall require any payment by a Savings Association Insurance Fund member for funds obtained under subsection (a) of this section for purposes of the Bank Insurance Fund.”

Pub. L. 109-171 repealed Pub. L. 104-208, § 2704(d)(14)(P). See 1996 Amendment note below.

Subsec. (d). Pub. L. 109-173, § 8(a)(23)(D), substituted “Borrowing for the Deposit Insurance Fund from insured depository institutions” for “Borrowing for BIF from BIF members” in heading.

Pub. L. 109-171 repealed Pub. L. 104-208, § 2704(d)(14)(Q). See 1996 Amendment note below.

Subsec. (d)(1). Pub. L. 109-173, § 8(a)(23)(B), (C), substituted “insured depository institutions” for “Bank Insurance Fund members” in two places in introductory provisions and “Deposit Insurance Fund” for “Bank Insurance Fund” in subpars. (A) and (B).

Subsec. (d)(2)(D). Pub. L. 109-173, § 8(a)(23)(A), substituted “insured depository institution” for “Bank Insurance Fund member”.

Subsec. (d)(3). Pub. L. 109-173, § 8(a)(23)(C), (E), substituted “the Deposit Insurance Fund” for “BIF” in heading and “Deposit Insurance Fund” for “Bank Insurance Fund” in text.

Subsec. (d)(5). Pub. L. 109-173, § 8(a)(23)(A), (F), substituted “insured depository institutions” for “BIF members” in heading and “insured depository institution” for “Bank Insurance Fund member” in subpars. (A) and (B).

Subsec. (e). Pub. L. 109-173, § 8(a)(24), added subsec. (e).

1996—Subsec. (a). Pub. L. 104-208, § 2704(d)(14)(N), which directed substitution of “Deposit Insurance Fund” for “Bank Insurance Fund or the Savings Association Insurance Fund” and “the Deposit Insurance Fund” for “each such fund” in fifth sentence, was repealed by Pub. L. 109-171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (b). Pub. L. 104-208, § 2704(d)(14)(O), which directed substitution of “Deposit Insurance Fund” for “Bank Insurance Fund or Savings Association Insurance Fund”, was repealed by Pub. L. 109-171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (c)(3). Pub. L. 104-208, § 2704(d)(14)(P), which directed striking out par. (3), was repealed by Pub. L. 109-171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (d). Pub. L. 104-208, § 2704(d)(14)(Q), which directed substitution of “DIF” for “BIF” and “Deposit Insurance Fund” for “Bank Insurance Fund” wherever appearing, was repealed by Pub. L. 109-171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

1993—Subsec. (c)(3). Pub. L. 103-204 added par. (3).

1992—Subsec. (d)(2)(D). Pub. L. 102-550 substituted “member” for “Member”.

1991—Subsec. (a). Pub. L. 102-242, § 101, substituted “\$30,000,000,000” for “\$5,000,000,000”.

Subsec. (c). Pub. L. 102-242, § 103(a), added subsec. (c).

Subsec. (d). Pub. L. 102-242, § 105, added subsec. (d).

1990—Pub. L. 101-508 inserted section catchline, designated existing provisions as subsec. (a), inserted heading, substituted “this subsection” for “this section” wherever appearing, substituted “The Corporation may employ any funds obtained under this section” for “The Corporation may employ such funds”, and added subsec. (b).

1989—Pub. L. 101-73 substituted “\$5,000,000,000 outstanding at any one time, subject to the approval of the Secretary of the Treasury” for “\$3,000,000,000 outstanding at any one time”, substituted “an amount determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities” for “the current average rate on outstanding marketable and nonmarketable obligations of the United States as of the last day of the

month preceding the making of such loan”, and inserted at end “The Corporation may employ such funds for purposes of the Bank Insurance Fund or the Savings Association Insurance Fund and the borrowing shall become a liability of each such fund to the extent funds are employed therefor. There are hereby appropriated to the Secretary, for fiscal year 1989 and each fiscal year thereafter, such sums as may be necessary to carry out this section.”

#### CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-173 effective Mar. 31, 2006, see section 8(b) of Pub. L. 109-173, set out as a note under section 1813 of this title.

Amendment by Pub. L. 109-171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109-171, set out as a Merger of BIF and SAIF note under section 1821 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104-208, formerly set out as a note under section 1821 of this title.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102-242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102-550, set out as a note under section 191 of this title.

#### RETIREMENT AND CANCELLATION OF CAPITAL STOCK; PAYMENTS OF CAPITAL AND SURPLUS TO SECRETARY OF THE TREASURY

Act Aug. 5, 1947, ch. 492, § 1, 61 Stat. 773, directed the Federal Deposit Insurance Corporation to retire its capital stock by paying the amount received therefor (whether received from the Secretary of the Treasury or the Federal Reserve banks) to the Secretary of the Treasury, to be covered into the Treasury as miscellaneous receipts, with the Corporation to pay to the Secretary so much of its capital and surplus as is in excess of \$1,000,000,000, the balance of the amount to be paid to the Secretary in units of \$10,000,000 except that the last unit to be paid could be less than \$10,000,000.

#### § 1825. Issuance of notes, debentures, bonds, and other obligations; exemptions

##### (a) General rule

All notes, debentures, bonds, or other such obligations issued by the Corporation shall be exempt, both as to principal and interest, from all taxation (except estate and inheritance taxes) now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority: *Provided*, That interest upon or any income from any such obliga-